

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\* \* \* \* \*

UNITED STATES OF AMERICA

vs.

JOSEPH MATZ

\* \* \* \* \*

CRIMINAL ACTION  
No. 10-10220-JLT

BEFORE THE HONORABLE JOSEPH L. TAURO  
UNITED STATES DISTRICT JUDGE  
**SENTENCING**

A P P E A R A N C E S

UNITED STATES ATTORNEY'S OFFICE  
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Boston, Massachusetts 02210  
for the United States  
By: Thomas E. Kanwit, AUSA

FEDERAL DEFENDER OFFICE  
District of Massachusetts  
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for the defendant  
By: Ian Gold, Esq.

Courtroom No. 22  
John J. Moakley Courthouse  
1 Courthouse Way  
Boston, Massachusetts 02210  
August 30, 2011  
11:15 a.m.

CAROL LYNN SCOTT, CSR, RMR  
Official Court Reporter  
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P R O C E E D I N G S

**THE CLERK:** All rise for the Honorable Court.

**THE COURT:** Good morning, everybody.

**VOICES:** Good morning, Your Honor.

**THE CLERK:** This is criminal matter No. 10-10220,  
United States of America versus Joseph Matz.

Counsel please identify themselves for the record.

**MR. KANWIT:** Good morning, Your Honor. Thomas  
Kanwit for the United States.

**MR. GOLD:** Good morning, Your Honor. Ian Gold on  
behalf of Joseph Matz.

**THE COURT:** Okay. The defendant is here. And this  
is a hearing on sentencing.

And the government has a recommendation?

**MR. KANWIT:** We do, Your Honor. The government's  
recommendation is 151 months, which is the low end of the  
*Guidelines* that Mr. Matz faces as a career offender. Given  
Mr. Matz's criminal history, his very high level of  
recidivism, the government's recommendation is actually,  
from my standpoint, low. It takes into account some of the  
factors that defense counsel has argued for.

But at bottom it's founded upon several factors.

**THE COURT:** What is the guideline range again?

**MR. KANWIT:** 151 to 188 months. He's a career  
offender. He has a prior conviction in this courthouse for

1 bank robbery by force. He would have been a career offender  
2 at that point and was initially sentenced as a career  
3 offender but --

4 **THE COURT:** Any mandatory?

5 **MR. KANWIT:** No, not as a career offender, there is  
6 no mandatory minimum.

7 **THE COURT:** All right.

8 **MR. KANWIT:** Because one of his career offender  
9 predicates turned out to be too old to be considered a  
10 predicate for career offender status, he was resentenced to  
11 47 months.

12 Virtually as soon as he got out he relapsed and did  
13 the same type of behavior that he's been engaged in most of  
14 his adult life.

15 We have a detailed psychological explanation for  
16 why that is happening but what I consider to be an extremely  
17 facile conclusion at the end, which is that with  
18 psychotherapy and supervision, and now that he's on lithium,  
19 we can be reasonably sure he won't relapse.

20 The only thing that's different at this point other  
21 than Mr. Matz's advancing age is that he is on lithium. He  
22 was tried on lithium some years ago and that seemed to help  
23 him but then somehow he was not kept on lithium.

24 I think that's a fairly slender read for the Court  
25 to hang its hat on that the Court can protect society

1 sufficiently with the kind of sentence the defendant is  
2 advocating, five to six years. This is a man who keeps  
3 engaging in the same kind of behavior: Robbing banks  
4 because he has either an obsession or addiction to cocaine  
5 or an obsession with women.

6 Now, I don't belittle for a moment the  
7 psychological history and what Mr. Matz has gone through.  
8 It would be challenging for anyone. But the fact is that  
9 that is who he is. That can't be changed by lithium itself  
10 or anything else.

11 And what we see with Mr. Matz is that he does not  
12 have sufficient impulse control to stop himself from going  
13 into a bank and demanding money. He has done it time and  
14 time again. He robbed five banks within one month or six  
15 weeks in connection with this robbery. This is one of the  
16 five robberies. We chose to only charge him with one  
17 because we frankly didn't see any point to piling on because  
18 we could get a sufficient sentence with one robbery.

19 But the Court has to be aware that he confessed to  
20 all five robberies, not just the one for which the Court is  
21 facing sentencing him today on.

22 In addition, he's had other crimes previous in his  
23 past where he has done essentially the same sort of thing.  
24 So the government is very concerned that this defendant has  
25 to be kept away from society because he cannot control

1 himself.

2           **MR. GOLD:** Your Honor, what we have is a spree of  
3 robberies to which Mr. Matz admitted. And it's coming a  
4 year after he was released from prison for another set of  
5 bank robberies, also the same type of situation, about three  
6 in a row. He did some state time on those and some federal  
7 time, the sentence was 47 months.

8           But in contrast to what Mr. Kanwit says, one of the  
9 things I think it's important to do, we do in our  
10 memorandum, is kind of stretch out the period of time from  
11 when he was released to now.

12           He actually started out doing very well. He worked  
13 at Au Bon Pain, Souper Salad, was in a halfway house, was  
14 engaged with the treatment that he had, which makes the kind  
15 of outcome here all the more sad in a way.

16           But he was, through his own admission -- we spoke  
17 with Ms. Marcy from Probation, to Dr. Rosmarin who came in,  
18 the psychiatrist that we hired came in twice, interviewed  
19 him in 2010 and 2011 -- but really taken by surprise by the  
20 strength of his feelings for this woman Dawn Battle. He  
21 became obsessed with her, thinking about her --

22           **THE COURT:** She passed away?

23           **MR. GOLD:** She is the woman who passed away.

24           But what is striking to me, and Dr. Rosmarin bit  
25 into the records really deeply, but he was struggling and

1 being open about this at the time with his therapists. He  
2 had a psychiatrist and a psychologist at the time trying to  
3 figure out how to manage this and he failed. He failed. He  
4 got kind of wrapped up in how he was going to support her in  
5 this kind of fantasy life and then robbed a bank because  
6 that's what he had known to do before to get the type of  
7 cash that he thought he needed. He then slipped and started  
8 using cocaine and it was off to the races.

9 Now he presents as someone who is sort of harrowed  
10 by what he did. He's got a close relationship with his  
11 father David Matz who teaches at U. Mass. Boston who has  
12 written a letter that we submitted to the Court. And it  
13 talks about what happened with insight and kind of reasoning  
14 through what happened. And I think both Dr. Rosmarin and  
15 Professor Matz talk about this as insight that will create a  
16 buffer for relapse in the future.

17 He has got the insight. He has got the age. He's  
18 going to be released -- he's in his early forties now. And  
19 he also has the medication change, which is not unimportant.  
20 I appreciate what the government is saying in one respect.  
21 I mean, it's not the whole kit and caboodle here but it is a  
22 very important thing.

23 And the storms that Mr. Matz has weathered over the  
24 past year are pretty severe. And he's kind of come through  
25 them all right and which we attribute in part to the

1 medication change that has him a little bit better put  
2 together. So that's the picture.

3 I mean, in terms of the sentencing, the length of  
4 the sentence, Mr. Matz also has a supervised release  
5 violation based on this one episode that he admits he  
6 engaged in and also owes time of an uncertain length, he's  
7 got a five-year suspended sentence that he owes to  
8 Connecticut from the prior spree. And it's uncertain what's  
9 going to happen there so he's got a lot of baggage or  
10 wreckage to clean up based on this. And that goes into our  
11 recommendation for about what's essentially half of what the  
12 *Guidelines* put out, which is I think producing diminishing  
13 returns at that point by just keeping him in longer.

14 (Pause in proceedings.)

15 **MR. GOLD:** I know Mr. Matz --

16 **THE COURT:** I am going to ask him. I was just  
17 thinking of -- can I see you?

18 (Whereupon, the Court and the Probation Officer  
19 conferred.)

20 **THE COURT:** Mr. Matz, you are about to be  
21 sentenced. And as one who faces sentencing you have the  
22 right to address the Court, tell me anything that may be on  
23 your mind if you would care to do so.

24 If you would prefer to remain silent, you may  
25 remain silent without fear of being prejudiced. It is up to

1 you. If you want to speak, go ahead. If you don't, that is  
2 okay.

3 **THE DEFENDANT:** I just wanted to say that, I mean,  
4 I know it's bad, you know, but this is a different situation  
5 than all of the other times because I was doing good. And I  
6 got in a situation with a woman that I had never really  
7 experienced in the past and it just kind of swallowed me up,  
8 you know, and it became more than I could deal with.

9 You know, Mr. Kanwit said that this is who I am,  
10 you know, but it isn't. I guess, I mean, I don't really  
11 know who I am but, I mean, I do know that the things that I  
12 was doing out there in the beginning, you know, were not  
13 good.

14 And, you know, I am more than what the record says.  
15 I mean, he made it seem like I was just a throw-away human  
16 being and I'm not. You know, I tried, I did the best that I  
17 could. I spoke to everybody that was in my life. And, you  
18 know, it just, it didn't get any better, you know, the  
19 obsession, that constant thinking about her, about what I  
20 could do to make it better. And it just took over every  
21 other part of my life. I lost my jobs and every other area  
22 of my life was just destroyed.

23 And eventually I started to use but it stems from  
24 me wanting to just take the easy way out. I tried and I did  
25 good, I worked hard. And, you know, I'm going to do okay.



1 I mean, it just got out of control and I didn't know what to  
2 do. And I did, I fell back on what I had known in the past.  
3 But, you know, with all due respect to what he said, it's  
4 not who I am, you know.

5 And it seemed like now it was all for nothing  
6 because now she's gone and I lost everything.

7 So, that's it.

8 **THE COURT:** All right. I am going to sentence you  
9 to 84 months. And I want you to understand that I think the  
10 government's recommendation was a reasonable one. It is a  
11 very, very difficult position for the government to be in  
12 and I understand and I think you made a reasonable  
13 suggestion. I just think that you don't need that much  
14 punishment at this stage of this man's career. And if we  
15 give him a little slack, perhaps he will use that  
16 opportunity to his advantage and society's advantage when he  
17 gets out. If he doesn't, then he is going to come back  
18 again. And if they bring him to me, I will remember this  
19 occasion very clearly.

20 Do you understand that?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** Okay. So, now, anything else?

23 **THE PROBATION OFFICER:** There are a number of other  
24 items.

25 The Probation Office would suggest a couple of

1 judicial recommendations that may assist Mr. Matz when he is  
2 in prison, including a judicial recommendation that the  
3 defendant participate in all available substance abuse  
4 treatment including, but not limited to, the Bureau of  
5 Prison's 500-Hour Residential Drug Abuse Program.

6 **THE COURT:** Any objection to that?

7 **MR. GOLD:** No, Your Honor, no objection to that.

8 **THE COURT:** Go ahead.

9 **THE PROBATION OFFICER:** And the second one would be  
10 a judicial recommendation that he be designated to an  
11 institution commensurate with security where the Bureau of  
12 Prisons can afford appropriate psychiatric/psychological  
13 care for the defendant's documented mental health needs.

14 **MR. GOLD:** We were going to propose the same  
15 condition.

16 **THE COURT:** All right, so no objection. Go ahead.

17 **THE PROBATION OFFICER:** There would also be a  
18 period of supervised release for Mr. Matz, which would be,  
19 the guideline range is two to three years.

20 **THE COURT:** Any objection --

21 **MR. GOLD:** No.

22 **THE COURT:** Three years.

23 **THE PROBATION OFFICER:** We'd recommend three years.

24 **THE COURT:** Three years.

25 **THE PROBATION OFFICER:** That there is also

1 restitution in this case. There was \$7,112 taken from  
2 Sovereign Bank but my understanding is that \$4,073 was  
3 recovered by law enforcement to be turned over to Sovereign  
4 Bank so that would make a balance of Mr. Matz owing \$3,039  
5 for restitution.

6 **THE COURT:** Any objection to that?

7 **MR. GOLD:** No.

8 **THE COURT:** Okay.

9 **THE PROBATION OFFICER:** And that restitution  
10 payments would begin immediately according to the Bureau of  
11 Prisons Financial Responsibility Program while he is  
12 incarcerated and according to a court-ordered repayment  
13 schedule when he is out on supervised release.

14 **THE COURT:** Any objection to that?

15 **MR. GOLD:** No.

16 **THE COURT:** Okay. Go ahead.

17 **THE PROBATION OFFICER:** And restitution payments  
18 would be made to the Clerk's Office at this court for  
19 transfer to Sovereign Bank.

20 **THE COURT:** Any objection to that?

21 **MR. GOLD:** No.

22 **THE COURT:** Okay.

23 **THE PROBATION OFFICER:** Mr. Matz would have to  
24 notify the U.S. Attorney's Office within 30 days of any  
25 change of mailing or residence address that occurs while any

1 portion of the restitution remains unpaid.

2 **THE COURT:** Any objection?

3 **MR. GOLD:** No.

4 **THE PROBATION OFFICER:** We would not recommend any  
5 fine because of the need to pay restitution and Mr. Matz's  
6 inability to pay a fine.

7 **THE COURT:** Any objection?

8 **MR. KANWIT:** No, Your Honor.

9 **THE COURT:** Okay.

10 **THE PROBATION OFFICER:** Then there would be some  
11 conditions of supervised release. There would be several  
12 mandatory conditions.

13 The first one that the defendant shall not commit  
14 another federal, state or local crime and shall not  
15 illegally possess a controlled substance.

16 **THE COURT:** Any objection?

17 **MR. GOLD:** No, Your Honor.

18 **THE PROBATION OFFICER:** The second one would be  
19 that the defendant shall refrain from any unlawful use of a  
20 controlled substance and submit to one drug test within  
21 fifteen days of release from imprisonment and at least two  
22 periodic drug tests thereafter not to exceed 104 tests per  
23 year as directed by the Probation Office.

24 **THE COURT:** Any objection?

25 **MR. GOLD:** No, Your Honor.

1           **THE PROBATION OFFICER:** The defendant shall -- the  
2 third one -- the defendant shall submit to the collection of  
3 a DNA sample as directed by the Probation Office.

4           **THE COURT:** Any objection?

5           **MR. GOLD:** No.

6           **THE PROBATION OFFICER:** And the fourth mandatory  
7 condition, that the defendant shall comply with the standard  
8 conditions that have been adopted by the court and set out  
9 at the *Guidelines* at Section 5D1.3(c).

10          **THE COURT:** Any objection to that?

11          **MR. GOLD:** No, Your Honor.

12          **THE PROBATION OFFICER:** And then to assist Mr. Matz  
13 when he is out on supervised release we would recommend a  
14 number of special conditions of supervision.

15               The first one being that the defendant is  
16 prohibited from possessing a firearm, destructive device or  
17 other dangerous weapon.

18          **THE COURT:** Any objection?

19          **MR. GOLD:** No, Your Honor.

20          **THE PROBATION OFFICER:** We would recommend three  
21 financial conditions to assist our office in the collection  
22 of the restitution payments.

23               The first one that the defendant is to pay the  
24 balance of any restitution imposed according to a  
25 court-ordered repayment schedule.

1           **THE COURT:** Any objection?

2           **MR. GOLD:** No, Your Honor.

3           **THE PROBATION OFFICER:** The defendant is prohibited  
4 from incurring new credit charges or opening additional  
5 lines of credit without the approval of the Probation Office  
6 while any financial obligations remain outstanding.

7           **THE COURT:** Any objection?

8           **MR. GOLD:** No, Your Honor.

9           **THE PROBATION OFFICER:** The defendant is to provide  
10 the Probation Office access to any requested financial  
11 information which may be shared with the Financial  
12 Litigation Unit of the U.S. Attorney's Office.

13           **THE COURT:** Any objection there?

14           **MR. GOLD:** No.

15           **THE PROBATION OFFICER:** And then as far as  
16 treatment, we recommend substance abuse treatment. The  
17 defendant is to participate in a program for substance abuse  
18 counseling as directed by the Probation Office, which may  
19 including testing not to exceed 104 tests per year. The  
20 defendant may be required to contribute to the cost of such  
21 services based on the ability to pay or availability of  
22 third-party payment.

23           **THE COURT:** Any objection there?

24           **MR. GOLD:** No, Your Honor.

25           **THE PROBATION OFFICER:** And also mental health

1 treatment. The defendant is to participate in a mental  
2 health treatment program as directed by the Probation  
3 Office. He may be required to contribute to the cost of  
4 services for such treatment based on the ability to pay or  
5 availability of third-party payment.

6 **THE COURT:** Any objection?

7 **MR. GOLD:** No, Your Honor.

8 **THE PROBATION OFFICER:** And the last one is that  
9 the defendant shall at all times use his true name and is  
10 prohibited from using any false identifying information,  
11 including but not limited to any aliases, false dates of  
12 birth, false Social Security numbers and incorrect places of  
13 birth.

14 **THE COURT:** Any objection?

15 **MR. GOLD:** No, Your Honor.

16 **THE COURT:** Okay.

17 **THE PROBATION OFFICER:** And then there is also a  
18 special assessment of \$100.

19 **MR. GOLD:** No objection to that, Your Honor.

20 **THE COURT:** All right. Is that it?

21 **THE PROBATION OFFICER:** That's it from the  
22 standpoint of Probation. I don't know if there is anything  
23 else --

24 **THE COURT:** Anything else you want to add?

25 **MR. GOLD:** We would request that the Court

1 recommend the Bureau of Prisons designate Mr. Matz as close  
2 to this area as possible. I think that's a standard --

3 **THE COURT:** We will make that recommendation. Of  
4 course, you know that I have no authority to do anything but  
5 make the recommendation.

6 **MR. GOLD:** Yes, Your Honor.

7 **THE COURT:** Okay. Anything else? Anything else  
8 from the government?

9 **MR. KANWIT:** No, Your Honor.

10 **THE COURT:** All right. Now, Mr. Matz, you have  
11 been sentenced. And as one who has been sentenced, you have  
12 the right to appeal that sentence if you would care to do  
13 so.

14 If you don't have funds to prosecute an appeal, you  
15 will be permitted to appeal without payment of any fees. If  
16 you don't have funds for a lawyer, one will be provided for  
17 you.

18 You have 14 days to file a notice of appeal if it  
19 is your intention to do so.

20 Do you understand that?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** Anything else?

23 **MR. KANWIT:** Just for the record, Your Honor, while  
24 I understand the Court's reasoning, it's important that the  
25 record reflect the government's objection to the sentence.



1           **THE COURT:** Okay.

2           **MR. KANWIT:** Thank you.

3           **THE COURT:** Is that it? All right. Thank you,  
4 everybody.

5           **MR. KANWIT:** Thank you, Your Honor.

6           **MR. GOLD:** Thank you, Your Honor.

7           **THE DEFENDANT:** Thank you, Judge.

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9           (WHEREUPON, the proceedings were recessed at 11:35  
10 a.m.)

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C E R T I F I C A T E

I, Carol Lynn Scott, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/S/CAROL LYNN SCOTT

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**DATE: February 10, 2012**